

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re:

CLEMMER'S CONSTRUCTION, LLC.

Debtor.

Case No.: 23-40136

Chapter 11

**COMMERICAL CREDIT GROUP INC.'S AGREED MOTION FOR
ENTRY OF ORDER APPROVING STIPULATION FOR ADEQUATE PROTECTION**

Commercial Credit Group, Inc. ("CCG"), a secured party and party in interest, pursuant to 11 U.S.C. §§ 362(d) and 105(a), Federal Rule of Bankruptcy Procedure 4001 and Rule 4001-1 of the Rules of Practice and Procedure of the United States Bankruptcy Court for the Western District of North Carolina, moves for entry of an agreed order approving the Stipulation for Adequate Protection, in support, states as follows:

1. CCG made a series of loans for the acquisition of equipment which the Debtor uses for its daily operations.
2. The Debtor and CCG have entered into the attached Stipulation, **Exhibit 1** hereto, for Adequate Protection of CCG's interest in the financed Equipment pending confirmation of a confirmed plan of reorganization or further order of the Court.
3. A proposed Order is attached as **Exhibit 2**.

WHEREFORE, CCG respectfully requests entry of the attached order approving the attached Stipulation for Adequate Protection and granting such other relief the Court deems appropriate.

Respectfully submitted,

Agreed to by
Law Office of R. Keith Johnson, P.A.

COMMERCIAL CREDIT GROUP INC.

/s/ R. Keith Johnson
R. Keith Johnson
NC Bar 8840
1275 S. NC 16 Bus. Hwy.
Stanley, NC 28164
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Attorney for Debtor

By: /s/ Niall T. McLachlan
Niall T. McLachlan
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525 N. Tryon Street, Suite 1000
Charlotte, NC 28202
Tel: 704.703.1968
Fax: 704.973.9528

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on September 11, 2023 via electronic mail through the Court's CM/ECF System upon all parties entitled to receiving service thereunder, and via U.S. Mail to all creditors listed on the attached service list.

Niall T. McLachlan
Niall T. McLachlan

Service List

Clemmer's Construction, LLC
1402 Mirror Lake Rd.
Lincolnton, NC 28092-7914

U.S. Bankruptcy Administrator Office
Shelby Division
401 W. Trade Street
Suite 2400
Charlotte, NC 28202-1633

Clemmer's Landscape, Inc.
1402 Mirror Lake Rd.
Lincolnton, NC 28092-7914

James David Nave
James David Nave, Attorney
51 Lawrence Place
Asheville, NC 28801-1428

Concrete Supply Co.
3823 Raleigh St.
Charlotte, NC 28206-2042

Crete Solutions, LLC
2005 Eastwood Rd., Ste. 200
Wilmington, NC 28403-7233

Internal Revenue Service
P.O. Box 7317
Philadelphia, PA 19101-7317

Internal Revenue Service | Centralized
Insolvency Operations
PO Box 7346
Philadelphia, PA 19101-7346

Michael Clemmer
1402 Mirror Lake Rd
Lincolnton, NC 28092-7914

NC Department of Revenue
P. O. Box 25000
Raleigh, NC 27640-0100

U.S. Securities Exchange
Office of Reorganization
950 East Paces Ferry Road, N.E.
Suite 900
Atlanta, GA 30326-1382

Westlake Financial
4751 Wilshire Blvd., #100
Los Angeles, CA 90010-3847

Exhibit 1 Stipulation

Exhibit 1
Stipulation

**UNITED STATES BANKRUPTCY COURT
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**STIPULATION FOR
PAYMENT OF ADEQUATE PROTECTION**

Commercial Credit Group Inc. ("CCG") and the Debtor, Clemmer's Construction, Inc., hereby stipulate as follows:

WHEREAS, under a Negotiable Promissory Note and Security Agreement dated July 29, 2022 in the face amount of \$73,755.00 ("**Note 1**"), CCG extended a loan to finance the acquisition of a 2022 Caterpillar 304 mini excavator (S/N AN400788) as more fully described in said Note, a true copy of which is attached as **Exhibit A** hereto. CCG duly perfected its lien against the equipment financed under Note 1 by filing a UCC financing statement with the North Carolina Secretary of State on August 1, 2022, **Exhibit B** hereto.

WHEREAS, under a Negotiable Promissory Note and Security Agreement dated September 1, 2022 in the face amount of \$100,422.00 ("**Note 2**"), CCG extended a loan to finance the acquisition of a 2022 Caterpillar 289D3 compact track loader (S/N JX911440) as more fully described in said Note, a true copy of which is attached as **Exhibit C** hereto. CCG duly perfected its lien against the equipment financed under Note 2 by filing a UCC financing statement with the North Carolina Secretary of State on August 24, 2022, **Exhibit D** hereto.

WHEREAS, under a Negotiable Promissory Note and Security Agreement dated December 14, 2022 in the face amount of \$193,600.00 ("**Note 3**"), CCG extended a loan to finance

the acquisition of a 2023 Caterpillar 308 mini excavator (S/N GG807404) as more fully described in said Note, a true copy of which is attached as **Exhibit E** hereto. CCG duly perfected its lien against the equipment financed under Note 3 by filing a UCC financing statement with the North Carolina Secretary of State on December 19, 2022, **Exhibit F** hereto.

WHEREAS, under a Negotiable Promissory Note and Security Agreement dated April 26, 2023 in the face amount of \$152,690.00 (“**Note 4**”), CCG extended a loan to finance the acquisition of a 2018 Caterpillar D5K2 LGPCB crawler dozer (S/N KY203707) as more fully described in said Note, a true copy of which is attached as **Exhibit G** hereto. CCG duly perfected its lien against the equipment financed under Note 4 by filing a UCC financing statement with the North Carolina Secretary of State on April 26, 2023, **Exhibit H** hereto.

WHEREAS, Note 1, Note 2, Note 3 and Note 4 are referred to hereinafter collectively as the “**Notes**”. References to the “**Equipment**” mean all of the Equipment financed under the Notes as described above and as more fully described in the Notes.

WHEREAS, CCG originally furnished the acquisition of the Equipment for Clemmer’s Landscape, Inc. which has effectively ceased operations. That corporation was owned by Michael Clemmer who is the member/manager of the Debtor. The Equipment is in the possession of the Debtor, is and has been used almost exclusively by the Debtor in its operations and is and has been essential to those operations, and the Debtor represents that the Equipment is necessary for the Debtor’s effective reorganization. The Debtor has a possessory interest in the Equipment which is protected by the automatic stay and the Debtor has received and will continue to receive equivalent direct and indirect value for all payments made and to be made under the Notes and this Stipulation.

WHEREAS, as of the petition date, the total indebtedness due and owing under the Notes was approximately \$357,831.00, broken down as follows:

Acct #	Principal	Interest	Late/ NSF Fees	Total	Per Diem
Note 1	48,300.78	376.47	396.75	49,074.00	24.15
Note 2	66,557.83	538.57	383.70	67,480.10	33.28
Note 3	124,310.32	2,610.52	301.50	127,222.34	62.16
Note 4	111,996.05	1,175.96	882.55	114,054.56	56.00
Totals	351,164.98	4,701.52	1,964.50	357,831.00	175.58

WHEREAS, Debtor agrees that the Indebtedness is fully-secured.

WHEREAS, the Debtor and CCG have agreed to the provisions of this Stipulation after good faith arm's length negotiations.

NOW THEREFORE, the Parties hereby stipulate and agree as follows:

1. The foregoing recitals are incorporated herein by reference as if set forth in full herein and are made an express part of this Stipulation.

2. In order to adequately protect CCG's interest in the Equipment, the Debtor will pay CCG \$9,234.00 on September 5, 2023 and on the 5th day of each month thereafter, and will maintain insurance coverage on the Equipment in accordance with the terms of the Notes, through the effective date of a plan of reorganization or until further order of the Court.

3. The Debtor waives any claim that payments made under the Notes and payments to be made under this Stipulation are avoidable in any action or proceeding.

4. All payments to CCG referenced herein shall be directed to: Commercial Credit Group Inc. using the wire instructions to be provided by CCG or, at Debtor's option and authorization, by ACH payment, and shall be applied to the indebtedness in accordance with the Notes.

5. This Stipulation is conditioned upon the United States Bankruptcy Court entering a final order approving all the terms of this Stipulation. This Stipulation, and any order approving

same, shall bind the Debtor, CCG, and their respective successors and assigns.

6. The parties agree that Debtor shall be deemed in default under the terms of this Stipulation should Debtor fail to make any payment or perform any obligation required by Debtor hereunder, or upon the lapse of insurance coverage on the Equipment.

7. In the event of (i) a default as defined herein, other than a default arising from the lapse of insurance coverage, and upon ten (10) days' notice to Debtor's counsel upon the first default, seven (7) days' notice to Debtor's counsel upon the second default, five (5) days' notice to Debtor's counsel upon the third default and immediately upon the fourth default, or (ii) upon a default arising from the lapse of insurance coverage that is not cured by the Debtor within 48 hours, then CCG may declare that Debtor's rights under this Stipulation are terminated, and CCG may (a) reject all further payments by Debtor on the Obligation, and (b) CCG will be entitled to file a Declaration of Default and an Order Terminating the Automatic Stay which the Court may order without further notice and hearing.

STIPULATED AND CONSENTED TO BY:

**Law Office of R. Keith Johnson,
P.A.**

/s/ R. Keith Johnson

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1275 S. NC 16 Bus. Hwy.
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Telephone: 704-827-4200
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Commercial Credit Group Inc.

/s/ Niall T. McLachlan

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